



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

TO: Barry E. Hill, Director, Office of Environmental Justice ("OEJ")
Office of Enforcement and Compliance Assurance ("OECA")

FROM: Theodore J. Kim, Legal Counsel, OEJ/OECA /s/ *Ted Kim*

DATE: October 3, 2005

RE: "Environmental Justice in the News" for the Week Ending October 7, 2005

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This memorandum summarizes select environmental justice news actions for the period beginning September 30, 2005 through the week ending October 7, 2005. The summary is limited to Lexis/Nexis searches conducted using the following query: "(environment! w/2 (justice or racism or equity or disproportionate or disparate)) or (environment! w/25 minorit! or low***income) or (executive order 12898) or (civil right! w/25 environmental) or ("fair housing act" w/25 (environment! or zon!))." Please note that multiple articles covering the same topic were not included. Similarly, articles pertaining to international or foreign-based environmental justice issues were not included, unless they specifically pertained to the United States. Finally, because the search had not been updated for over a six month period, several items were not included, because they were no longer timely.

1. **News Items.**

The following news was particularly noteworthy:

- **"Pursuing Justice? Group Seeks Applicants," Portland Press Herald (Maine Oct. 6, 2005) at B2.** Maine Initiatives announced that it will award three-year grants of up to \$40,000 to local and statewide groups that pursue social, economic, and environmental justice. The application deadline is November 9, 2005.
- **""Martial Law on Civil Rights"" in New Orleans: Jesse Jackson," Agence France Presse (Oct. 4, 2005).** After an unannounced visit in a hurricane-ravaged New Orleans neighborhood on October 4, 2005, Jesse Jackson decried the response efforts classifying it as "'martial law on civil rights.'" In addition, Mr. Jackson asserted that it was "'corrupt'" that storm survivors were left jobless and half the city staff were being laid off, while contracts to rebuild went to primarily out-of-state corporations like Halliburton and Bechtel. Mr. Jackson concluded by

asserting that failure to rebuild the predominately African-American Lower Ninth Ward neighborhood would amount to “racial profiling.”

- **“Children’s Health: Recruitment for Large Federal Study Begins,” American Health Line (Oct. 3, 2005). *See also* “First Sites Picked for Ambitious Child-Health Study,” The Associated Press (Sept. 29, 2005).** On Thursday, September 29, 2005, the National Institutes of Health, Centers for Disease Control and Prevention, and the United States Environmental Protection Agency (“EPA”) announced that they would cosponsor the National Children’s Study, which would track more than 100,000 children from the womb to the age of 21 to examine numerous environmental factors that may affect children’s health, such as their food, air, and living conditions. Although enrollment will not begin until 2007, the first six sites were announced, where researchers will spend the next year determining how to recruit women and babies that represent the community. Ultimately, the study will seek participation of 105 communities and will enroll 1,500 women in early pregnancy, or before conception, in each county over a five-year period. The study will include a significant number of minority children to address potential health disparities related to environmental factors.
- **“U.S. NIEHS Awards \$37 Million to Train Emergency and Hazardous Waste Workers, Bioterrorism Week (Oct. 3, 2005) at 5.** The National Institute of Environmental Health will award more than \$37 million in grants to workers involved in emergency response and hazardous waste cleanup. The grants will train the workers to protect them and their communities from exposure to toxic materials. The new awards, which were created in the aftermath of the World Trade Center disaster, will fund five training programs, including the Minority Worker Training Program, which will train disadvantage urban youth preparing for employment in the environmental restoration and hazardous materials field, and the Brownfield Minority Worker Training Program that will train and provide economic and environmental restoration to disadvantaged residents impacted by brownfields.
- **“The Watchdogs Failed; Four Cleanups, Yet Waste Is Still Everywhere,” The Record (New Jersey Oct. 3, 2005) at A1.** Despite four prior cleanups of paint sludge at the Ringwood Superfund Site, some residents, including the Executive Director of the Sierra Club in New Jersey, believe that more cleanup is necessary and are urging the New Jersey’s Department of Environmental Protection (“DEP”) to take legal action against EPA and Ford Motor Company. DEP Commissioner Bradley Campbell is aware of the problem and has urged the United States Attorney for New Jersey to pursue criminal charges against Ford , who Campbell believes made false submissions to federal officials regarding the cleanup at the Site. Currently, EPA and Ford are undertaking the fifth cleanup at the site, which EPA has promised will be comprehensive. In 1994, EPA believed that the Site was clean and removed it from the National Priorities List; however, based on current situation, the New Jersey Environmental Justice Task Force has

urged that Ringwood be relisted. The Task Force asserted that the residents have been treated unfairly under the Superfund program, citing its belief that extent of the cleanup received did not meet expectations.

- **“The Environment: Death and Rebirth,” The American Prospect (Oct. 2005) at A24.** The article discussed how environmentalists, health experts, and poverty advocates are working together to address the urban asthma epidemic. It noted that poor and minority children, in particular, suffer a disproportionate burden of asthma, which may be attributed, in part, to their environmental living conditions. Specifically, it asserted that homes, schools, and workplaces contain mold, dust mites, and cockroaches that may trigger acute attacks and promote development of asthma. In addition, the article identified that poorer communities are more susceptible to other broader environmental hazards, such as elevated ozone, diesel fumes, and other airborne pollutants, and are less likely to receive preventative care, such as monitoring and simple medications, due to a lack of decent health insurance. The article noted that solutions to this urban epidemic are piecemeal due to the divergent interests involved. Accordingly, efforts are underway to better coordinate research on how environmental conditions affect human health. For instance, based upon the national Environmental Public Health Tracking Program established by Congress in 2002, a team of researchers in Alameda County, California have developed a program that utilizes a geographic information system that prints maps that track, among other things, rates of unemployment, poverty, overcrowding, and toxic sites. Based on these maps, changes in land-use decisions, housing developments, or diesel truck routes may occur that may lead to a reduction on the causes of asthma.
- **“Panel Debates EPA Role in Saying When Storm Areas Are Safe,” National Journal’s Congress Daily (Sept. 30, 2005). *See also* Testimony of Beverly Wright, Director, Deep South Center for Environmental Justice (Sept. 29, 2005).** On September 29, 2005, the House Energy and Commerce Environment Subcommittee held a hearing in which witnesses debated whether the federal government is responsible for informing displaced residents when it is safe to return. EPA Deputy Administrator Marcus Peacock testified that while EPA is extensively testing for hazardous substances in areas that Hurricane Katrina affected, EPA’s role is to provide ‘guidance’ to state and local officials who make the final decision. Residents and environmentalists, however, disagree with Mr. Peacock’s assessment, stating that EPA has a legal and moral duty to inform people when the neighborhood is safe. In addition, Beverly Wright, the Director of the Deep South Center for Environmental Justice, spoke at the hearing and provided the most emotional testimony of the session. After providing some background on her organization and historical overview of environmental justice issues in New Orleans, Ms. Wright called for the expansion of chemical testing and more timely reporting of test reports. In addition, she urged EPA to work closely with stakeholders from the impacted region. She concluded by requesting that citizens be given “clear and accurate instruction on procedures for reentering

the City and other areas in the Gulf Coast region to protect their health.” In expressing her concern with her perception of the response to Hurricane Katrina, Ms. Wright urged the Committee to remember the “vulnerable communities of color that exist in the shadow of chemical and petro chemical facilities . . . who are especially in harms way.”

- **“Storms Revive Energy Debate,” The Christian Science Monitor (Boston, Sept. 29, 2005) at 1.** In the aftermath of Hurricanes Katrina and Rita as well as the rising fuel costs, legislators and special interest groups are debating the energy policy in the United States. The primary goal of most Republican bills in increasing supply, as evidenced by the “Gasoline for American’s Security Act of 2005,” which would ease restrictions on where refineries may be built, designate closed military bases as refinery sites, and change certain Clean Air Act requirements that apply to refineries. In praising the Bill, industry sources categorize it as “far-reaching.” In contrast, environmental groups assert that the oil industry is using the national disaster to repeal environmental rules designed to protect public health and safety. In addition, they believe that no evidence exists that environmental statutes, like the Clean air Act, have any relation to the high gasoline prices or the lack of domestic refining capacity. The article concluded that “long-standing concerns about ‘environmental justice’” is a closely related issue.
- **“Rep. Solis: Republican Bill Fails to Address Energy Supply Crisis,” U.S. Fed. News (Sept. 28, 2005).** The article sets forth Representative Hilda L. Solis (D-CA) speech on September 28, 2005 during the House Energy and Commerce Committee’s markup of the “Gasoline for America’s Security Act of 2005.” Representative Solis expressed her disappointment with the legislation, which she believed “will do nothing for energy supply and security, but will instead do serious damage to public health and our environment.” She stated that the legislative process for the proposed legislation was lacking, since no hearings on the proposal were held and no affected community, city, or state, as well as no environmental justice or environmental witness, were heard from. She further noted that her opposition to the legislation was for substantive reasons, such as: (1) the negative impact on public health and quality of life; (2) the failure to protect the minority communities that Hurricane Katrina affected most. Specifically, Representative Solis asserted that the proposal, which could not guarantee a gasoline supply, would worsen public health, because it would roll back clean air protections, lessen the local authorities’ ability to protect public health, undermine the Solid Waste Disposal Act, and potentially damage the quality of the Nation’s drinking water.
- **“EPA Tells Polluters It Wants Less Data: Rule Changes Would Let Firms Emit More Before Reporting It,” Chicago Tribune (Sept. 28, 2005).** Under a recent EPA proposal, industrial companies will no longer have to report most chemical releases of less than 5,000 pounds, which represents a tenfold increase

from the current reporting amount of 500 pounds. In addition, factories, power plants, refineries, and other pollution source will be able to report their releases every other year, rather than annually. The article quoted Kimberly Nelson, the Assistant Administrator of EPA's Office of Environmental Information, who commented that the changes were made to reduce the regulatory burden on industries and to allow the Agency more time to review and analyze the data. Critics believe the changes would make it more difficult to track companies and determine pollution trends. More importantly, they assert that the changes would make it difficult to pressure industries to reduce emissions.

- **“Superfund Website Now Available in Spanish,” States News Service (Sept. 28, 2005).** EPA has made its website on the Superfund program available in Spanish to help reach out to the Hispanic community. The site offers a variety of Superfund information, such as fact sheets and questions and answers, to Spanish speakers who may live near Superfund Sites. EPA hopes that the information will provide Hispanics with the necessary tools to allow them to meaningfully participate during the Superfund cleanup process. The Hispanic Community represents one of the fastest growing minority populations in the country. Due to this growth and the fact that several Superfund sites are near Hispanic demographic center, the Superfund Program office deemed it necessary to provide resources for Hispanic communities living near Superfund sites.
- **“Cleanup in New Orleans a Delicate Balancing Act. Experts: Culture Must be Restored with Environment,” Dallas Morning News (Sept. 27, 2005) at 1A.** In the aftermath of Hurricane Katrina, cleanup efforts in New Orleans are being complicated by the need to make the City environmentally habitable and the goal of ensuring that the environmental renewal will help repair the City's social fabric and shattered culture. The United States Environmental Protection Agency (“EPA”) and Centers for Disease Control and Prevention share the lead environmental roles and have identified numerous obstacles, such as getting rid of flood water, to making the City habitable. To help expedite the cleanup effort, EPA has temporarily waived certain rules, such as open burning. In addition, Senator James Inhofe of Oklahoma has sponsored a bill that would let the EPA suspend its standards for four months, with possible extensions up to eighteen months, during the cleanup effort. These governmental actions, however, concern the Robert D. Bullard, Director of the Environmental Justice Resource Center at Clark Atlanta University. Mr. Bullard believes that New Orleans' poor population would suffer from the weakened cleanup standards and advocates one fair, just, and equitable cleanup standard for everyone. In addition, the City's low-income community leaders are requesting a more active voice in the decisions affecting New Orleans to ensure that no disenfranchisement occurs and that the City maintains its distinctive character and history. They point to the fact that local smaller or minority firms have not received any of the available no-bid contracts, which went to large companies. Moreover, they fear that developers and industries may have plans for land that used to house residents.

- **“Stephen Johnson on Katrina’s Environmental Impact” (NPR radio broadcast, Sept. 27, 2005).** EPA Administrator Stephen Johnson discussed the hazardous environmental conditions that the hurricanes wrought, including bacteria-infested flood water, as well as water containing lead and petroleum products. Mr. Johnson noted that EPA has not received any pressure from the Bush Administration to withhold information, as Hugh Kaufman charged; rather, the pressure has been to ensure that EPA remains responsive to information requests. Mr. Johnson stressed that EPA’s job is to “restore the environment for everybody, regardless of race, regardless of social status.” He reemphasizes President Bush’s goal of clearing away the “legacy of inequality,” when cleaning the hurricane’s debris. Mr. Johnson concluded by noting that the aftermath of Hurricane Katrina presented the biggest environmental challenge that the United States faced due to a natural disaster. Erik Olson, senior attorney for the Natural Resources Defense Council, then joined the program. Mr. Olson believed that two problems existed: (1) the area of contamination was so large that some areas had not been tested; and (2) the test data had not been released in a timely manner. In addition, Mr. Olson expressed concern with the potential exposure that children may face to the “toxic soup of contaminants that is in the flood water.” He concluded by noting his concern that no plan was in place to ensure a fair and full cleanup in every community, which may result in toxins eventually ending up in areas that house the poorest people.
- **“Clayton Landfill Draws Ire,” Atlanta Journal and Constitution (Sept. 27, 2005).** The final public hearing on the proposed landfill in northern Clayton was held on September 26, 2005. Nearly 100 residents expressed their concern to the Georgia Environmental Protection Division that a landfill in the area will hurt property values and potentially contaminate streams that provide drinking water to the county. In addition, the residents wondered whether environmental racism existed, since the area is predominantly African American.
- **“University of South Carolina Sets \$400K for Storm Study; \$400K for Hurricane Data,” The Biloxi Sun Herald (Mississippi Sept. 25, 2005) at A6.** The University of South Carolina has launched a project that will help Gulf Coast Research institutions capture data that may be used to prepare for the next major hurricane after Hurricanes Katrina and Rita. The school will grant \$400,000 of its research funds for eighteen research proposals. Four to five grants will receive the maximum grant amount of \$25,000. Included among the data that will be compiled will be information on such public health issues as the risk of West Nile Virus after a hurricane, the role of black churches in promoting resiliency, and the evacuation response among minorities and environmental damage to salt marshes.

2. **Recent Litigation.**

No noteworthy cases were identified for this time period.

3. Regulatory/Legislative/Policy

The following list of items appears to be the most pertinent:

A. Federal Congressional Bills and Matters.

- **House Resolution 477, “Expressing the Sense of the House of Representatives that the Crisis of Hurricane Katrina Should Not be Used to Weaken, Waive, or Roll Back Federal Public Health, Environmental, and Environmental Justice Laws and Regulations, and for Other Purposes,” introduced on September 29, 2005 by Representative Hilda L. Solis (D-CA). *Status: Referred to House Committee on Energy and Commerce and Committee on Resources on September 29, 2005. See also Senate Resolution, 261, “A Resolution Expressing the Sense of the Senate that the Crisis of Hurricane Katrina Should Not be Used to Weaken, Waive, or Roll Back Federal Public Health, Environmental, and Environmental Justice Laws and Regulations, and for Other Purposes,” introduced on September 29, 2005 by Senator John Kerry (D-Mass.) on September 29, 2005. *Status: Referred to the Senate Committee on Environment and Public Works on September 29, 2005.**** The Resolution attempts to counter the of authority to EPA to waive any environmental regulation that might impede reconstruction in areas that Hurricane Katrina affected. According to a press release that Representative Solis issued, the Resolution calls for the protection of public health and environmental laws during the time period when Gulf coast residents need them the most. The Resolution particularly protects low-income and minority communities, who are most negatively affected by pollution and poor environmental standards. According to the press release, the Resolution ensures that the victims of Katrina are not “victimized twice, first by a hurricane then by Washington’s assault on clean air and clean water.” Senator John Kerry (D-Mass.) introduced Senate Resolution 261 and noted that it will prevent “sneak attack on environmental justice.” Included among the provisions are: (1) Hurricane Katrina, and other such disasters, will not be used to weaken, waive, or roll back federal public health, environmental, and environmental justice laws and regulations; (2) state, local, and regional authorities will retain their authority for compliance and permitting of industrial and other facilities, as well as their role in enforcing and implementing monitoring and cleanup regulations; (3) testing, monitoring, cleanup, and recovery should be carried out in compliance with Executive Order 12898 and in a manner that, among other things, protects public health and the environment; and (4) federal rebuilding of communities and the economy of the Gulf Region should be the model of the integrated, diverse, and sustainable society that all Americans desire and deserve.

- **S. 1711, “To Allow the Administrator of the Environmental Protection Agency to Waive or Modify the Application of Certain Requirements,” introduced on September 15, 2005 by Senator James Inhofe (R-OK). *Status: Referred to Senate Committee on Environment and Public Works on September 15, 2005.*** The Bill authorizes EPA’s Administrator to waive or modify the application of certain EPA requirements during a 120-day period beginning August 26, 2005, if the Administrator deems that such a waiver or modification is needed to respond to a situation or damage that Hurricane Katrina caused, and is in the public interests. The Bill also permits the Administrator to extend the waiver period not longer than 18 months after the Act is enacted. The Bill requires consultation with the affected States and requires the Administrator to provide notifications of waivers or modifications to specified congressional committees.

- ***Miscellaneous House and Senate Congressional Record Mentions of Environmental Justice include:***
 - **Testimony of Kathleen Blanco, Governor, State of Louisiana before the Senate Finance Committee (Sept. 28, 2005).**

- **Federal Register Notices.**
 - **EPA, Environmental Impact Statements and Regulations; Availability of EPA Comments, 70 *Fed. Reg.* 45,390 (Aug. 4, 2005).** EPA announced the availability of its comments pursuant to the Environmental Review Process (“ERP”), as required by Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act. With regard to the draft Environmental Impact Statements (“EIS”), EPA raised concerns with: (1) the “1st Street Viaduct and Street Widening Project,” due to the proposed project’s air quality impacts. EPA also raised concerns about similar transportation projects in the project vicinity and requests a broader environmental justice analysis; (2) “Grand Gulf Early Site Permit Site,” due to concerns of wetlands and aquifer impacts, as well as environmental justice; and (3) “Creeks Forest Health Recovery Project,” due to environmental concerns about water, air, and environmental justice impacts. With regard to the final EISs, EPA raised concerns with the “Folsom Dam Road Access Restriction Project,” due to continued concerns that changes in traffic patterns may indirectly lead to localized air quality and environmental justice impacts.
 - **EPA, Ethylene Oxide Risk Assessment: Notice of Availability, 70 *Fed. Reg.* 44,632 (Aug. 3, 2005).** The notice announced the availability of EPA’s human health risk assessment for the pesticide ethylene oxide (“ETO”) and opened a public comment period on the related documents that closes on October 3, 2005. EPA is developing a Reregistration

Eligibility Decision for ETO, which is a fumigant used, among other things, to sterilize medical or laboratory equipment. One particular area that EPA was interested in receiving comments on was its goal to achieve environmental justice. Specifically, EPA sought information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to ETO, compared to general populations.

B. **State Congressional Bills and Matters.**

- **California, Senate Bill 87, introduced January 14, 2005, by Committee on Budget and Fiscal Review. *See also California, Assembly Bill 141, introduced on January 13, 2005, by Committee on Budget. Status: Passed the Senate on July 7, 2005; Approved by Governor on July 21, 2005; Filed with Secretary on July 21, 2005.*** The Bill amends an existing law that requires the Department of Food and Agriculture to adopt specifications for gasoline or automotive spark-ignition fuels for use in internal combustion engines and motor vehicles. The Bill adds Section 901 of the Public Utilities Code, which provides, among other things, that at least one public meeting of the CAL-EPA Environmental Justice Advisory Committee will be held to solicit input on the appropriate siting criteria and location of hydrogen fueling stations and production facilities to address environmental justice concerns. The Bill specified that Section 901 will be repealed on January 1, 2007.
- **California, Senate Bill 870, introduced on February 22, 2005, by Senator Martha M. Escutia (D-Montebello (District 30)). *Status: Amended on May 4, 2005; Set, first hearing on May 26, 2005. Held in Committee (Senate Appropriations) and under submission.*** The Bill amends a law that vested local and regional authorities with primary responsibility for controlling air pollution from all sources other than vehicular sources. The Bill amends Article 3.2, “Enforcement,” by adding Section 42417, which provides that a strategy will be established to address the lack of enforcement of air pollution laws and regulations in low-income and minority communities. The Bill also provides that the strategy will identify actions to enhance enforcement of environmental justice, including creating environmental justice enforcement zones.
- **California, Senate Bill 923, introduced on February 22, 2005, by Senator Dean Florez (D-Shafter (District 16)). *Status: Amended on March 29, 2005; In assembly, read first time, held at desk on August 22, 2005.*** The Bill added Chapter 2.8, “Transition Assistance Act of 2005,” to Part 1 of Division 3 of the Unemployment Insurance Code. Section 9951 of this Chapter provided, in part, that any shift in the use of public resource that causes a disproportionate impact to any citizens of the State should be mitigated to ensure environmental justice.

- **Georgia, House Resolution 540, introduced on March 14, 2005, by Representative Sheila Jones (D-District 44). *Status: Resolution Adopted.*** The Resolution recognized the work of Ms. Na'Taki Osborne and noted that Ms. Osborne co-founded the Center for Environmental Public Awareness, a nonprofit organization that supports community groups that seek environmental justice. It also recognized her advocacy of, and expertise in, environmental justice issues.
- **Hawaii, Senate Resolution 78, introduced on March 16, 2005, by Colleen Hanabusa (D-District 21). *Status: Adopted on April 15, 2005.*** The Resolution requested the Department of Health to develop and issue a guidance document on environmental justice policy that will apply to environmental review at all levels under Hawaii Revised Statutes Chapter 3433. The guidance document will set forth procedures that ensure inclusion of the following in the environmental review: (1) analysis of disproportionately high and adverse effects on minority and low-income communities; (2) effective public participation and access to information; (3) actions to undertake if disproportionately high and adverse effects are identified. The Department of Health was requested to submit the guidance document and any recommendations no later than twenty days prior to the convening of the 2006 Regular Session.
- **Louisiana, House Resolution 98, introduced on June 9, 2005, by Representative Michael L. Jackson (D-District 61). *Status: Adopted. Enrolled on June 13, 2005.*** The Resolution commended Robert L. Harris, the current Vice President of environmental affairs at the Pacific Gas & Electric Company, and recognized, among other things, his efforts as a former board member of EPA's National Advisory Council on Environmental Justice, as well as on the California EPA Advisory Committee on Environmental Justice.
- **Maine, Senate Bill 435, "An Act to Ensure Environmental Justice," introduced on March 15, 2005, by Senator Ethan Strimling (D-Cumberland County (District 8)). *Status: Placed in legislative files on May 23, 2005.*** The Bill, a concept draft, would require the Commissioner of Environmental